



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

**For Meeting Date: May 13, 2010**

**Agenda Item No. 5: Approval Consideration for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) Pursuant to Section 2714(f) for the Black Rock 1, 2 and 3 Project, County of Imperial.**

**INTRODUCTION:** The Surface Mining and Reclamation Act of 1975 (SMARA) allows for a one- time exemption for certain surface mining operations should the State Mining and Geology Board (SMGB) determine the operation to be of an infrequent nature and involve only minor surface disturbances. The California Energy Commission is requesting a determination as to whether a borrow site in Imperial County is subject to SMARA or eligible for a one-time exemption from SMARA. The material from the borrow site will be used for construction and flood control purposes associated with a new geothermal power plant project. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions.

**STATUTORY CONSIDERATIONS:** Public Resources Code (PRC) Section 2735 defines surface mining operations and states:

*“Surface mining operations” means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:*

- (a) Inplace distillation or retorting or leaching.*
- (b) The production and disposal of mining waste.*
- (c) Prospecting and exploratory activities.”*

SMARA allows for a one-time exemption pursuant to Article 1 of Public Resources Code (PRC), Division 2, Chapter 9, Section 2714(f), which states:

*“Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.”*



*Executive Officer's Report*

Before exemptions from the provisions of SMARA are granted, the SMGB, pursuant to SMARA and SMGB Resolution No. 93-6, considers the following four criteria:

**Criteria 1 - Compliance with the California Environmental Quality Act**

**(CEQA):** Pursuant to PRC Section 2712(a), has an environmental review been completed for the proposed activity either separately or as part of a larger project? PRC Section 2712(a) states “*It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that: (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.*”

**Criteria 2 - Local authority:** Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency? PRC Section 2715 states “*No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:*

(a) *On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.*

(b) *On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.*

(c) *On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.*

(d) *On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.*

(e) *On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.*

(f) *On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.”*

PRC Section 2770(a) states “*Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.*”



**Criteria 3 - End use of the mining or borrow site:** Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity is proposed to occur defined? PRC Section 2711(b) states “*The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.*”

PRC Section 2712 states “*It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:*

(a) *Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.*

(b) *The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.*

(c) *Residual hazards to the public health and safety are eliminated.”*

**Criteria 4 - Impacts of the operation on commercial activities:** Pursuant to PRC Section 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered? PRC Section 2714(b) states “*Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:*

(1) *All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).*

(2) *The lead agency’s approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).*

(3) *The approved construction project is consistent with the general plan or zoning of the site.*

(4) *Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.”*



**BACKGROUND:** The California Energy Commission is requesting a determination as to whether a borrow site in Imperial County is subject to SMARA or eligible for an exemption from SMARA. The material from the borrow site is intended to be used for construction and flood control purposes associated with a new geothermal power plant project. The project incorporates a 34-acre borrow site located approximately 1,000 feet southeast of the plant site on property owned by same landowner as the plant site (California Energy, parent company of CE Obsidian). The material to be excavated will be used solely for the construction of foundations and a perimeter berm around the 160-acre geothermal power plant site in order to meet Imperial County flood control requirements. The volume of material exported from the site will be up to 300,000 cubic yards, and no material will be sold. Topsoil on-site will be salvaged and replaced after backfilling with topsoil stripped from plant site during initial grading activities.

The activity is temporary (12-18 months), and the applicant will be required to restore the borrow site to its present use (agriculture) immediately after it is no longer needed for preparation of the power plant site. Half of the borrow site is designated Prime Farmland but not under Williamson Act contract (verified by Imperial County). Land use is compatible with Imperial County zoning and land use ordinances (A-3-G = Agriculture/industrial with geothermal overlay)

**DISCUSSION:** Borrow pits are considered surface mining operations and subject to SMARA pursuant to CCR 3501. The project does not meet the criteria for the on-site construction exemption because the borrow site is not located on the construction site.

General threshold criteria triggering SMARA is discussed in PRC Section 2714(d), which indicates that SMARA does not apply to operations where *“Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product total less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.”* In this case the removal of 300,000 cubic yards of material from the borrow pit is subject to SMARA, unless exempted by the SMGB pursuant to SMARA Section 2714(f).

**Exemption Criteria:** It is recognized that not all surface mining operations are an efficient “fit” under SMARA, and that many projects of limited size, duration, economic and environmental impact would be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully applied. To address these special situations, SMARA provides the SMGB with authority under PRC Section 2714(f) to grant exemptions under specific conditions when the proposed activity is of an infrequent nature and involves only minor surface disturbance.

The proposed project 1) exceeds SMARA's minimum thresholds by disturbing more than one acre of land and 1,000 cubic yards of material for commercial purposes; however, one-time



exemptions have been granted by the SMGB in the past in instances where such thresholds have been significantly exceeded.

The SMGB must contemplate four specific criteria, as discussed above, in considering granting a one-time exemption:

**Criteria No. 1:** Pursuant to PRC Section 2712(a), has an environmental review been completed on the proposed activity either separately or as part of a larger project?

**Finding No. 1:** An environmental review has been performed for this project.

**Criteria No. 2:** Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency?

**Finding No. 2:** All necessary permits have been obtained by the County.

**Criteria No. 3:** Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the proposed activity is to occur defined?

**Finding No. 3:** The end use or proposed end use of the property on which the activity will occur will be compatible with Imperial County zoning and land use ordinances (A-3-G: Agriculture/industrial with geothermal overlay).

**Criteria No. 4:** Pursuant to PRC Sections 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered?

**Finding No. 4:** The project is essentially the need for a borrow pit for material to be used for a construction project. No potential impact of commercial interests has been provided.

Due to the fact that the project is necessary for construction in conjunction with a renewable energy project, Department of Conservation, Office Mine Reclamation would support a one-time exemption. Granting the one-time exemption should be on the condition that all topsoil shall be salvaged and replaced as part of reclamation to an agricultural end use. This is to be verified upon completion by the SMGB's staff.

**CONSIDERATIONS BEFORE THE SMGB:** The Executive Officer can deny a one-time exemption request if, upon review, the request does not meet the criteria set forth in SMGB Resolution No. 93-6. However, such a matter can also be placed before the SMGB if 1) a request is made by one SMGB member; 2) the Executive Officer cannot come to a clear



consensus; or 3) if controversy arises surrounding the request. The Executive Officer can not grant an exemption.

In cases when a request comes before the SMGB, the SMGB can grant a one-time exemption on a case-by-case basis. Prior to granting such exemptions, the SMGB considers, and must assure, that the following criteria have been fully addressed:

- 1) Compliance with the California Environmental Quality Act (CEQA);
- 2) Local authority;
- 3) End use of the mining or borrow site; and
- 4) Impacts of the operation on commercial activities.

**EXECUTIVE OFFICER'S RECOMMENDATION:** The proposed activity is subject to SMARA. However, it is the Executive Officer's conclusion that the one-time exemption request may meet the SMGB's criteria for consideration of such exemptions. Based on the information before SMGB staff, and analysis and findings set forth above, it is the Executive Officer's recommendation that the SMGB at this time grant the request for a one-time exemption, with the condition that that all topsoil shall be salvaged and replaced as part of reclamation to an agricultural end use. This should be verified upon completion by the SMGB's staff.

**SUGGESTED SMGB MOTION:**

To deny the request for a one-time exemption:

*Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by the California Energy Commission, and as described in this report and its attachments, is subject to the requirements of SMARA, and that the SMGB deny a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f).*

OR





To grant the request for a one-time exemption:

*Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by the California Energy Commission, and as described in this report and its attachments, is subject to the requirements of SMARA, and that the SMGB conditionally grant a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f), with the condition that all topsoil shall be salvaged and replaced as part of reclamation to an agricultural end use. This should be verified upon completion by the SMGB's staff.*

Respectfully submitted:

---

Stephen M. Testa  
Executive Officer

## EXHIBITS

- |                  |   |
|------------------|---|
| <b>Exhibit A</b> | <b>CE Obsidian Energy, LLC. Amendment Petition dated February 2010</b>  |
| <b>Exhibit B</b> | <b>CE Obsidian Energy, LLC. correspondence dated March 26, 2010</b>     |
| <b>Exhibit C</b> | <b>California Energy Commission correspondence dated April 7, 2010.</b> |

